

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

**FINAL STATEMENT OF REASONS AND
UPDATED INFORMATIVE DIGEST**

Subject Matter of Regulations: Audit

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 10100.2 through 10115.2**

The Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority granted by Labor Code sections 59, 129, 129.5, 133, and 5307.3, has adopted or amended the following Sections of Article 1 of Chapter 4.5, Subchapter 1.5, Division 1, of California Code of Regulations, title 8:

Section 10100.2	Definitions.
Section 10101.1	Claim File--Contents.
Section 10103.2	Claim Log--Contents and Maintenance
Section 10104	Annual Report of Inventory
Section 10105	Auditing, Discretion of the Administrative Director.
Section 10106.1	Routine and Targeted Audit Subject Selection; Complaint Tracking; Appeal of Targeted Audit Selection
Section 10106.5	Civil Penalty Investigation.
Section 10107.1	Notice of Audit; Claim File Selection; Production of Claim Files; Auditing Procedure.
Section 10108	Audit Violations--General Rules.
Section 10109	Duty to Conduct Investigation; Duty of Good Faith.
Section 10111.1	Schedule of Administrative Penalties for Injuries on or After January 1, 1994.
Section 10111.2	Full Compliance Audit Penalty Schedules; Target Audit Penalty Schedule.
Section 10112	Liability for Penalty Assessments.
Section 10113.4	Written Statement and Supporting Evidence.
Section 10113.5	Prehearing Conference; Subject Matter; Prehearing Order.
Section 10114.2	Affidavits
Section 10115	Appeal of Notice of Compensation Due.
Section 10115.1	Appeal of Notice of Penalty Assessment--Filing and Contents
Section 10115.2	Appeal of Notice of Penalty Assessment; Conference Process and Delegation of Authority; Notice of Findings, Service

UPDATED INFORMATIVE DIGEST

The Administrative Director incorporates the Informative Digest prepared in this matter. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

UPDATE OF INITIAL STATEMENT OF REASONS

The Administrative Director incorporates the Initial Statement of Reasons prepared in this matter. The purposes and rationales for the regulations as set forth in the Initial Statement of Reasons continue to apply. The proposed regulations changes are summarized below.

THE FOLLOWING SECTIONS WERE ADOPTED OR AMENDED FOLLOWING THE PUBLIC HEARING AND CIRCULATED FOR TWO 15- DAY COMMENT PERIOD (January 15, 2009 – January 30, 2009; January 22, 2009 – February 6, 2009)

Modifications to Section 10100.2

Definitions

In subdivision (a), the definition of "adjusting location" is modified to substitute the phrase "local management " for "personnel assigned supervisory responsibility over claims administration".

Specific Purpose of Change to Section 10100.2

The substituted phrase is essentially the definition of "local management" as set forth in proposed section 10100.2(ee).

Modifications to Section 10101.1

Claim File - Contents

Subdivision (p), as initially proposed, is now moved to the introductory paragraph of the regulation; the paragraph now provides that its provisions will apply 60 days after its effective date (the date of filing with the Secretary of State). Subdivision (c) is modified to clarify that the copy of correspondence in the claim file that is sent to the Division of Workers' Compensation must be either initiated or received by the claims administrator. Subdivision (k) and proposed subdivisions (l), (m), (n), and (o) are modified to delete the phrase "whether stored on paper or in electronic form", Proposed subdivision (o) is further modified by expressly including correspondence as a type of document describing a telephone conversation relating to a claim that must be included in the claim file.

Specific Purpose of Changes to Section 10101.1

The relocation of former subdivision (p) to the introductory paragraph clarifies that the contents of claim files may be in hard copy, electronic form, or some combination of hard copy and electronic form. In response to comments, the provisions of the regulation will

apply 60 days after the effective date of the regulation. This will allow claims administrators the opportunity to change their current business practices regarding claim file organization and also preclude retroactive application. The modification to subdivision (c) removes any interpretation of the provision requiring a claims administrator to be responsible for including in a file correspondence which they may have not received. The modification to subdivision (o), including correspondence as a type of document describing a telephone conversation relating to a claim that must be included in the claim file, allows for consistency with the other subdivisions.

Modifications to Section 10104 Annual Report of Inventory

Subdivision (d)(3) is modified to provide that the written notice advising the Administrative Director of a change in the information provided in the new Annual Report of Adjusting Locations must be sent to the manager of the Audit Unit within 45 calendar days after the effective date of the change. In subdivision (d)(2) and (4), the erroneous reference to subdivision (c)(1) is corrected to subdivision (d)(1).

Specific Purpose of Changes to Section 10104

The modification to subdivision (d)(3) allows for consistency with subdivision (b) regarding where the notice of change shall be mailed and the timeframe for doing so. Modifications in subdivision (d)(2) and (4) are to correct clerical errors.

Modifications to Section 10106.1 Routine and Targeted Audit Subject Selection; Complaint Tracking; Appeal of Targeted Audit Selection

The introductory paragraph to subdivision (c) is modified to provide that “Pursuant to Labor Code section 129(b), the Audit Unit may conduct a targeted profile audit review or full compliance audit of targeted audit subjects.”

Specific Purpose of Changes to Section 10106.1

In response to comments, the modification is made for the purpose of clarity; the language of the regulation will now match the language of Labor Code section 129(b)(3).

Modifications to Section 10107.1 Notice of Audit; Claim File Selection; Production of Claim Files; Auditing Procedure.

The next to last sentence of subdivision (c)(3)(B) is modified to substitute the word “required” for the word “issued”.

Specific Purpose of Changes to Section 10107.1

The factor set forth in subdivision (c)(3)(B), used in calculating an audit subject's profile audit review performance rating, measures an audit subject's ability to timely issue the first temporary disability indemnity payment to an injured worker. Factoring in the number of randomly selected claims in which temporary disability payments (or, if applicable, first notices advising the injured employee of the provision of salary continuation in lieu of first temporary disability notices) were required instead of issued provides a more accurate measure of performance under this factor; using the number of claims where such payments and notices were issued technically excludes consideration of those claims where notices were required to be issued but the audit subject illegally failed to do so.

Modifications to Section 10111.2

Full Compliance Audit Penalty Schedules; Target Audit Penalty Schedule.

Subdivision (a)(10) is modified by returning to the current language and initially proposed amendment, stating that the administrative penalty for failure to comply with an order will be increased by 100%. The subdivision is further modified to delete the phrase "or is for any other benefit or medical expenses". Subdivision (b)(8)(B) and (b)(8)(C) are modified by deleting references to: benefit notices provided in California Code of Regulations, title 8, beginning with section 10133.50 (containing Notice of Potential Right to Supplemental Job Displacement Benefit and the Notice of Offer of Modified or Alternative Work); penalties assessed pursuant to section 10111.2(b)(27) (relating to penalties assessed for a materially incomplete or inaccurate supplemental job displacement benefit notice); and supplemental job displacement benefits. Subdivision (b)(8)(D) is modified to include the benefit notice in California Code of Regulations, title 8, beginning with section 10117 (containing the Notice of Offer of Work). The subdivision is further amended to provide that the penalty for materially inaccurate or incomplete benefit notices provided in California Code of Regulations, title 8, beginning with section 10133.50 is \$25, unless penalties are assessed pursuant to subdivision (b)(27).

Specific Purpose of Changes to Section 10111.2

The Division initially proposed an amendment allowing for a penalty increase of "up to" 100%, but has now reverted to the existing language which provides for a flat 100% increase. This return to the existing language is appropriate as the structure of section 10111.2 does not provide the Audit Unit with discretion to determine the amount of an administrative penalty within a specific range prior to mitigation under subdivision (c). The deletion of the phrase "or is for any other benefit or medical expenses" in subdivision (a)(10) was made because it is unnecessary. The failure to pay or late pay "any other benefit or medical expense", in violation of an award or order of the Workers' Compensation Appeals Board, the Rehabilitation Unit, or the Administrative Director, is more appropriately the subject of an administrative penalty under subdivision (b)(24).

Regarding the modifications to subdivision (b)(8)(B) and (b)(8)(C), although legal consequences exist for failing to send either the Notice of Potential Right to Supplemental Job Displacement Benefit or the Notice of Offer of Modified or Alternative Work, existing laws do not require that such notices be sent, let alone sent in a timely manner. Subdivision (b)(8)(D) is modified to include the new Notice of Offer of Work (section 10117 became effective November 17, 2008) and clarify that the administrative penalty under this section applies for a materially inaccurate or incomplete Notice of Potential Right to Supplemental Job Displacement Benefit unless a similar penalty is assessed under subdivision (b)(27).

UPDATE OF MATERIAL RELIED UPON

No additional documents beyond those identified in the Initial Statement of Reasons were relied upon by the Administrative Director except that public comments received were taken into consideration when finalizing the regulations.

LOCAL MANDATES DETERMINATION

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None.

CONSIDERATION OF ALTERNATIVES

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective as and less burdensome to affected private persons and businesses than the regulations that were adopted.

SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED

The summaries and responses to comments of each organization or individual which were received during the 45-day comment period and the two 15-day comment periods are contained in the rulemaking file and are incorporated by reference herein.

The public comment periods were as follows:

Initial 45-day comment period on proposed regulations: October 31, 2008 through December 15, 2008.

First 15-day comment period on modified text: January 15, 2009 through January 30, 2009.

Second 15-day comment period on modified text: January 22, 2009 through February 6, 2009.